

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 130912-U

NO. 4-13-0912

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

December 12, 2013

Carla Bender

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Woodford County
HEATHER M. SWIFT,)	No. 10CF97
Defendant-Appellant.)	
)	Honorable
)	John B. Huschen,
)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.

Presiding Justice Appleton and Justice Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendant filed a notice of appeal before the trial court ruled on her timely *pro se* motion for reconsideration of sentence, remand with directions to strike the notice of appeal and proceed on defendant's *pro se* motion was necessary.

¶ 2 This appeal comes to us on the motion of the office of the State Appellate Defender (OSAD) for summary remand with directions to strike the notice of appeal and proceed on defendant's timely *pro se* motion for reconsideration of sentence.

¶ 3 I. BACKGROUND

¶ 4 In September 2010, the State charged defendant, Heather M. Swift, with retail theft (720 ILCS 5/16A-3 (West 2010)). In December 2010, defendant pleaded guilty and the trial court sentenced her to 30 months' probation. On September 11, 2013, the trial court revoked defendant's probation and resentedenced her to 30 months' imprisonment.

¶ 5 On October 4, 2013, defendant mailed a *pro se* "Motion for Reduction of Sentence" and a notice of appeal to the Woodford County circuit clerk's office. The motion was accompanied by a notarized affidavit of service stating the motion was placed in the institutional mail at Logan Correctional Center on October 4, 2013. See Ill. S. Ct. R. 12(b)(3) (eff. Jan. 4, 2013). The motion and notice of appeal were file-stamped by the circuit clerk on October 15, 2013.

¶ 6 II. ANALYSIS

¶ 7 OSAD has filed a motion for summary remand with directions to strike the notice of appeal in this case and remand for proceedings on defendant's timely *pro se* motion for reconsideration of her sentence. The State concedes this cause should be remanded for compliance with Illinois Supreme Court Rule 606(b) (eff. Feb. 6, 2013).

¶ 8 Illinois Supreme Court Rule 606(b) provides, in relevant part:

"When a timely posttrial or postsentencing motion directed against the judgment has been filed by counsel or by defendant, if not represented by counsel, any notice of appeal filed before the entry of the order disposing of all pending postjudgment motions shall have no effect and shall be stricken by the trial court. Upon striking the notice of appeal, the trial court shall forward to the appellate court within 5 days a copy of the order striking the notice of appeal, showing by whom it was filed and the date on which it was filed. This rule applies whether the timely postjudgment motion was filed before or after the date on which the notice of

appeal was filed. A new notice of appeal must be filed within 30 days following the entry of the order disposing of all timely postjudgment motions." Ill. S. Ct. R. 606(b) (eff. Feb. 6, 2013).

¶ 9 Here, defendant timely filed a motion for reconsideration of her sentence within 30 days of sentencing. See *People v. Smith*, 2011 IL App (4th) 100430, ¶ 13, 960 N.E.2d 595 ("A court will consider an incarcerated defendant's postplea motion timely filed if the defendant placed it in the prison mail system within the 30-day period, regardless of the date on which the clerk's office received or file-stamped it."). The record does not reflect the trial court held a hearing or ruled on the motion. As a result, the notice of appeal must be stricken and the cause remanded for further proceedings on defendant's motion.

¶ 10 III. CONCLUSION

¶ 11 For the reasons stated, we grant OSAD's motion and remand the cause with directions to strike the notice of appeal; if defendant is indigent and desires counsel, appoint counsel to assist defendant with the preparation and presentation of the postplea motion; and hear defendant's motion.

¶ 12 Remanded with directions.